IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 1020 of 2002
With
CRIMINAL APPEAL No. 203 of 2003
To
CRIMINAL APPEAL No. 204 of 2003

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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RAJESHKUMAR @ MANGAL SUSHIL KUMAR KURMI PATEL
Versus
STATE OF GUJARAT

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Appearance :
THROUGH JAIL for Appellant,MS ROOPAL R PATEL for Appellant.
MS HANSA PUNANI, APP for Opponent.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 17/12/2007

COMMON ORAL JUDGMENT

1. These appeals arise out of a common judgment and order dated 15-11-2002 passed by learned Additional Sessions Judge, Panchmahals,

in Sessions Case No.86 of 2002.

2. Appellants were the original accused, who were charged with offences punishable under Sections 395, 397 of the Indian Penal Code. Learned Additional Sessions Judge by his impugned judgment convicted the appellants and sentenced them to rigorous imprisonment of seven years for offence punishable under Section 397 and five years for offence punishable under Section 395 of the Indian Penal Code and also imposed fine of Rs.5,000/-.

3. From the charge, Exh.2 framed against the accused, it can be seen that the prosecution case is that on 18-11-2002, at about 1:45 in the early morning hours, when Jaipur Express train was passing by Godhra Railway yard, the accused and three other unidentified persons committed dacoity with the aid of deadly weapons and extorted different sums of money ranging from Rs.5,000/- to Rs.100/- from different passengers and also took away their wrist watches.

4. Apparently the train in question did not have a scheduled stop at the station but upon the chain being pulled the train stopped. It is the case of the prosecution that the accused and other accomplices were trying to run away. Out of six persons, three though succeeded in running away, the accused persons were caught. They were caught with dharias in their hands and also the stolen cash and wrist watches.

5. The prosecution examined several witnesses, including some of the eye-witnesses who were in the train when the alleged incident took place. They also examined certain witnesses, who were on the railway platform when the train made an unscheduled stop.

6. P.W.5, Jitendrabhai Kishorilal was examined at Exh.20. He was travelling in the train in question. He had boarded the train from Vadodara. He stated that at about 1:30 at night when he was dozing, he heard some commotion. He saw that weapons were being hurled at the passengers. Some of the passengers also received injuries. The assailants were slapping people. There were five to seven people involved. He had put his wrist watch in his pocket. The watch was snatched away. He identified Rajeshkumar Parshuram, accused no.2 before the Court, as a person who had taken away his watch as well as his money. He stated that the police had arrested three of the assailants. He was shown the watch, muddamal article no.10, which he identified as his own.

7. Govind Goyal, P.W.8, Exh.24, was also a passenger travelling in the same train. He stated that there were about five to six persons, who had committed the robbery. They had weapons made of iron. He was sleeping on the seat. The accused were demanding money from the passengers and were beating them. Since he refused to give them, they forcibly took away money from his pant pocket. Witness identified Rajesh Parshuram, as one of the assailants who was present before the Court.

8. Janmohmmed Fatemohammed, P.W.9, was also travelling in the same train. He was sitting in the lower berth. He stated that after the train left Vadodara station, five people entered the bogie carrying iron weapons and asked the passengers to hand over whatever they had. Whoever refused was attacked. He further stated that they had taken away Rs.1,300/- from him. The train was moving at that time. When the train stopped at Godhra station, the assailants started running and passengers started shouting, upon which the police came and caught

three accused. The witness identified Rajesh Parshuram as the one who has assaulted him. He also identified Rajeshkumar alias Mangal as a person who has snatched away money from him.

9. In addition to the above noted witnesses who were actually travelling in the train, prosecution also examined several witnesses, who were on the platform at Godhra when the train stopped.

10. P.W.1, Ram Swaroop Sharma, was the railway guard, who was travelling in the train on the date of the incident. In his deposition, Exh.11, he stated that when the train was passing from Godhra yard, someone pulled the chain and he could hear the shouts from the next coach that people have been robbed. He thereupon got down from the train and upon asking the passengers found that their luggage and cash was robbed. He, therefore, informed the Station Master on walkie-talkie. He was later on informed that the police had caught the robbers but he had not seen them personally.

11. P.W.2, Jaysinh Khateja, Exh.14, was a Superintendent at the railway station at Godhra. He stated that Jaipur Express train did not have a scheduled stop at Godhra, however, the train stopped at 1:47 a.m. because of incident of robbery. After noting down the complaint of the passengers, the train was allowed to proceed further at 2:43 a.m.

12. P.W.3, Hirabhai Limbabhai, Exh.16, was present at Godhra Railway Station when the incident took place. He along with ASI-Indrasinh, PSI - Zala and PSI-Chhatrasinh and Police Constable-Virabhai etc. were present. When the chain pulling incident took place the train stopped. He, therefore, thought that something must have happened. He and others, therefore, ran towards general coach. At that time, from

the general coach some six persons with weapons in their hands got down and started running. They all, therefore, chased the persons and caught the accused persons. The passengers had identified them as assailants.

13. P.W.5, Virabhai Ramabhai, Exh.19, was the Police Constable on night general duty at Godhra station on the date of the incident. He also saw six persons getting down from the coach with dharias in their hands and had started running. He and other police personnel, therefore, chased them and caught three accused persons.

14. From the evidence on record, it can be seen that it was a case of accused being caught red handed. They were identified by the eye-witnesses, who were actually travelling in the train. They were arrested by the police personnel, who had rushed to the scene of the incident upon hearing the shouts of the people and upon seeing that the train had made an unscheduled forced stop.

15. One may recall that Godhra was not one of the scheduled stop for the train in question. Upon chain pulling, however, the train stopped at Godhra. The witnesses saw six persons getting down from the coach and trying to run away with dharias in their hands. Three of the assailants were caught. Their weapons were seized and muddamal articles were also seized from their body.

16. Nothing substantial has come out in the cross-examination of the witnesses. Eye-witness accounts of the passengers travelling in the train gets corroboration from the witnesses who were on the station and who had actually played an active role in catching hold of the accused. Though not an eye-witness, P.W.1, was also travelling in the same train

and his testimony also corroborates the eye-witness accounts. He had heard the passengers shouting for help.

17. Considering all these aspects of the matter, I find that the prosecution had led reliable evidence to bring home the charge against all accused persons. Consistent eye-witness account was that there were six assailants and they were carrying dharias. The accused were caught from the scene of offence while trying to escape after having robbed train passengers. The police could recover some of the cash and wrist watches collected by the accused. The conviction under Section 395 of the Indian Penal Code, therefore, was perfectly justified. Under Section 397, the punishment is prescribed where accused while committing robbery or dacoity use any deadly weapon or causes grievous hurt to any person or attempts to cause death or grievous hurt to any person. In such case, minimum punishment prescribed is seven years. It may be noted that the punishment so prescribed is not made flexible and once it is proved that the offence under Section 397 of the Indian Penal Code is committed, the Court has no discretion but to award punishment of at least seven years. So is the case with offence under Section 398 of the Indian Penal Code. It is provided that if at the time of attempting to commit robbery or dacoity the offender is armed with any deadly weapon, the imprisonment with which such offender shall be punished shall not be less than seven years.

18. The prosecution had established that the accused were carrying deadly weapons such as dharia. With the help of such weapons they had committed dacoity. Under the circumstances, the trial Court had no power to impose punishment less than seven years.

19. Under the circumstances while upholding the conviction of the accused persons, the last alternative submission of the counsel for the appellants that sentence may be reduced, also cannot be accepted.

20. In the result, appeals fail and are dismissed.

(Akil Kureshi, J.)

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